

Kseniya Havrylovskaya

Oksana Shmygliuk

Zhytomyr Ivan Franko State University

SUBJECTIVE LEGITIMATION OF LEGAL NORMS AS THE FACTOR OF ETHNIC SELF-CONSCIOUSNESS DEVELOPMENT

Kseniya Havrylovskaya, Oksana Shmygliuk. Subjective legitimation of legal norms as the factor of ethnic self-consciousness development.

The article analyzes the issue of the subjective legitimation of legal norms in interrelation with ethnic self-consciousness of Ukrainians. The formation of ethnic self-consciousness is limited by the state coordinates. Formal and informal rules of human activity is the context in which ethnic stereotypes, traditions, norms of behavior are formed. A special role in this process is played by non-official legal norms. This so-called "Common Law" is rooted in the everyday life of each ethnic group. Actually, informal knowledge of the legal norms is a kind of the "marker" that allows members of a particular ethnic group to distinguish proxy allies. Usually, the person tries to assimilate the indigenous ethnic group in the process of self-realization is more focused on the formal right, the "letter of the law."

Instead, the common law often contradicts formal law offering shorter (unfortunately, not always completely eligible) ways to achieve planned results (we can see it in politics, business, etc. - when members of other ethnic groups achieved great success at home, but cannot realize their ambitions in our area because of lack of understanding, which is the "spirit of the law", which values are represented). Indeed, the common law is the leader of ethnic self-consciousness, as it is manifested in such essential attribute of every ethnic group as proverbs and sayings. There are levels of the subjective legitimacy of the state legal system in the consciousness of the personality such as legal nihilism, legal relativism, legal rigorism.

Legal rigorism is characterized by a strict observance to legal norms, the legal behavior and thoughts include any compromises and only a strict adherence to law is possible. Legal relativism is characterized by a relative, completely symbolic and variable character. Legal nihilism is characterized by denying legal norms, non-recognition of their importance and significance, emphasizing their banality and formality by tendency to deny their effectiveness in regulation of relations between people. Legal nihilists consider that laws and forbids can be passed over where it can be without punishment and what would be great if the majority of laws and rules were abolished at all.

It was found that a characteristic feature of the mass legal psyche of Ukrainians is a legal relativism; there are no gender differences in the level of the subjective legitimation of the legal norms of the state. Phenomenological legal relativism is reflected in the fact that a person has the right to decide to adhere or not to adhere to legal regulations in each case. The basis of the legal origin of relativism is ambivalence of mass psyche. The legal relativism creates specific conditions for the formation of modern Ukrainian ethnic self-consciousness. Actually, this factor determines some contempt to laws, rules, formal regulations.

The personality considers the legitimacy of their own ideas about justice, the respect for the right as a social institution, and the representatives of the authorities, who are called to bring into action this right in society. Paradoxically, but this ability to the reflection, the concentration on the construct "fair-unfair" forms the "militancy" of Ukrainians, gives them the ability to defend their rights, to rebel against the existing government, to change the course of history, to form their beliefs, to protect them in the interaction with other ethnic groups.

Key words: ethnic self-consciousness, subjective legitimation of legal norms, legal rigorism, legal relativism, legal nihilism.

Articulation of issue. The research of ethnic self-consciousness is one of the practical problems of socio-psychological science. Consequently, current economic, socio-political, state, ethnic, migration processes in Ukraine define the research of mechanisms and factors in the formation of ethnic self-consciousness. A person, as an active object, is determined by his/her ability to understand, feel and reflect himself/herself as an individual and as a medium of ethnic and act according to it [1].

Analysis of recent research and publications. The problem of ethnic self-consciousness was investigated by Russian (O.V. Afonasenko, Yu.V. Bromley, L.M. Drobizheva, V.I. Kozlov, V.Yu. Khotynets) and Ukrainian scientists (V.B. Evtukh, H.S. Lozko, R.R. Slobodyan, H.A. Stavytskyi, M.-L.A. Chepa).

According to V.U. Hotynets, ethnic self-consciousness is a relatively stable system of conscious perceptions and assessments of ethnic differential and ethnic integrative components of life. The result of the formation of this system is the realization of the person him/herself as the representative of a particular ethnic group [2]. The scientist also draws attention to the cognitive component of ethnic self-consciousness. H.S. Lozko has similar views talking about ethnic self-consciousness, as a set of knowledge and understanding of the culture, traditions, ideals, values of their ethnic group, and awareness of yourself as the member of your nation among other ones. The scientist said that an important role in forming this phenomenon is played by the state and it is important to have a so-called state approach to the problems of ethnic, cultural and ethnic education that helps not to be assimilated [3].

Y.V. Bromley notes that ethnic self-consciousness is a whole range of ideas of nationality itself, its conscious interests, values and attitudes towards other nationalities, the notions of individuals about their own ethnic group, its properties [4]. According to V.I. Kozlov, ethnic self-consciousness is formed when the person joins the society and the development of basic social orientations [5]; V. B. Evtukh provides the following key properties of ethnic self-consciousness, as the awareness of a common ethnic origin, ethno-psychological features and common ethnic culture. The author notes that ethnic self-consciousness is based on mastering the elements of culture, customs and traditions that are the qualitative characteristics of ethnic communities. [6] V.S. Mukhina states on so-called ethnic self-consciousness variations such as traditional culture and values of the ethnic group included in the structure of consciousness of each individual. [7] L.M. Drobizheva identifies ethnic self-consciousness as a spiritual formation that includes national stereotypes, the idea of territory, culture, language, about the historical past, the attitude to cultural and historical traditions of its people, national interests that stimulate human activity [8]. O.V. Afonasenko underlines that ethnic self-consciousness can have different types: from distinct aggressive chauvinistic phenomena to incomprehensible blur state of ethnic self-identity. [9] H.A. Stavytskyi determines ethnic self-consciousness as a complex integrative process of cognition, emotionally value-based personality's attitude to others and itself as subjects of a specific ethnic group, carriers of subjective (psychological) and objective (social) peculiarities. According to these peculiarities, the personality regulates its behavior in the process of innerethnic and interethnic interactions [10].

Having analyzed theoretical sources, we can state that ethnic self-consciousness is a representation of an individual or an entire group of people about themselves, their ethnic group, that reflects the knowledge of their own ethnic group and the attitude to this group.

Unfortunately, we can mention a lack of empirical investigations, namely, Ukrainian ethnic self-consciousness. This issue is extra important in view of recent social and political events in Ukraine, when ethnic self-consciousness acquires new properties. We also see that, despite the significant amount of research, scientists don't pay enough attention to the fact that the formation of ethnic self-consciousness is limited by the state co-ordinates. Formal and informal rules of human activity is the context in which ethnic stereotypes, traditions, norms of behavior are formed. A special role in this process is played by non-official legal norms. This so-called "Common Law" is rooted in the everyday life of each ethnic group.

Actually, informal knowledge of the legal norms is a kind of the "marker" that allows members of a particular ethnic group to distinguish proxy allies. Usually, the person tries to assimilate the indigenous ethnic group in the process of self-realization is more focused on the formal right, the "letter of the law." Instead, the common law often contradicts formal law

offering shorter (unfortunately, not always completely eligible) ways to achieve planned results (we can see it in politics, business, etc. - when members of other ethnic groups achieved great success at home, but cannot realize their ambitions in our area because of lack of understanding, which is the "spirit of the law", which values are represented). Indeed, the common law is the leader of ethnic self-consciousness, as it is manifested in such essential attribute of every ethnic group as proverbs and sayings.

The aim of the article is to identify the legal basis for the formation of the modern Ukrainian ethnic self-consciousness.

Presentation of basic material of the research. According to basic principles of subjective oriented paradigm in a social psychology, personality is a subject of an activity in a legal sphere. The system of legal norms of the state is a source of requirements and restrictions towards the person. These requirements and restrictions often differ from life plans of the person and do not meet his or her needs and objectives. That is why the problem of a legal regulation of the behavior of a person is quite urgent and requires a thorough socio-psychological research. Unfortunately, during a long time the personality was only an object of a normative legal regulation and was unable to show its subjectivity in normal legal situations.

However, we think that personality is able to have a responsible attitude to its being in a legal field, to determine towards the requirements of the normative situation, of possible variants of behavior and its consequences and is able to make a right choice in terms of increasing of the effectiveness of his or her own life in general.

As a subject of activity the person perceives the system of legal norms and with a conscious intention interacts with them (is in normative legal situations), analyzes them in available measures and tries to convince itself in their compliance to own vital interests and plans. The activeness of a personality as of a subject of a normative legal regulation is primarily determined by the ability to reflect its staying in normative situations and to make a deliberate and conscious choice of type of the behavior in them.

Based on the analysis of a scientific literature the concept "a psychological mechanism of a normative legal regulation of person's behavior" was determined as a set of conditions and processes, conscious and subconscious that form a structural functional organization of life of a person in the context of the system of legal norms of the state which determine the character of interaction with it. Psychological mechanisms of a normative legal regulation of a person behavior are perceptive (social perception of the system of legal norms), legitive (psychologically subjective legitimation of legal norms), motivational (motivation of the activity of the person in the system of legal norms) [1, 2].

One of the most important mechanism, which determines the legal behavior of the person, is a legitimation of legal norms. This mechanism defines the person's tendency to relate legal norms with internal criteria of justice.

Every person has certain subjective notions about social justice. These notions are different. They often depend on a level of income and on a social status of the person. The person correlates legal norms with its internal notions about justice and depending on a result of this correlation chooses a way of a behavior in normative situations.

How can the peculiarities of the person depend on a legitimation of legal norms? The person can admit legal norms to be fair, justified, and right and then its legal behavior is legal and law-abiding. The person can deny legal norms, ignore them, act against them and then will offend law.

There is a situation when the attitude of the person to legal norms is not determined and ambivalent. From the one side the system of legal norms organizes and systematizes life. From

the other side, if personal interests are contrary to legal norms the person can offend law, so it means that legal norms are relative and their influence is not absolute.

Legitimation (lat. *legitimus* – legal, legitimated) is a psychological mechanism of functioning of the person in the system of legal norms of the state with the help of which the legal norm achieves a psychological legitimacy and expresses accuracy, reasonableness, appropriateness and other sides of compliance of concrete norm to settings, expectations of the person and its life plans. Legitimation of legal norms in the consciousness of the person is connected with a complex of emotions and internal settings of people, with notions of the person about conformity of a specific legal norm to norms of social justice.

The person forms the assessment of legitimacy of a legal norm by comparing it with its internal ideal model, with notions about social justice. If real existing norms cannot provide the person with a free way for self-realization, (especially social) the attitude to them will be critical and performance of norms will be compulsory. The person will represent a “zone of risk” because will try to move to the zone of deviant behavior at least seek.

The possibility of achievement of the goal mostly depends on the ability to take into consideration all the possible factors, which can help or prevent this.

The state has taken the responsibility to make at least some factors determined and for this, it creates a normative legal system of regulation of relations in the society and controls their implementation. That is why for a person will be legitime a system with a rational orientation of behavior, which provides a stability of law and strict implementation to it by all the citizens and what minimizes the unpredictability of a social life. Such legal system increases chances of the person who builds new life plans and makes steps towards their realization. Therefore, psychological legitimacy of legal norms largely determines the behavior of the person in a legal field.

The main goal of the investigation of a subjective legitimation of legal norms in the human psyche as a psychological mechanism of normative legal regulation of behavior of the person was to determine the level of subjective legitimation of legal norms of the state in a legal mass psyche. For this was used a methodic for determination of the level of subjective legitimation of legal norms in a mass legal psyche by N.V. Hazratova [3].

N.V. Hazratova determines such levels of subjective legitimation of a legal system of the state in the consciousness of the person as legal nihilism, legal relativism, and legal rigorism.

Legal rigorism (lat. *rigor* – firmness, strictness) – is characterized by a strict observance to legal norms, the legal behavior and thoughts include any compromises and only a strict adherence to law is possible. Such a person is characterized by a high level of social legal liability. However, in its expression legal rigorism turns into a legal formalism, into the reluctance to solve problems according to their real social legal content.

Legal relativism is characterized by a relative, completely symbolic and variable character. Relativism comes out of a one-sided emphasis of the variability of the reality and of denying of relative stability of things and phenomena. It is based on the absolutisation of such a principle that “The person is a measure of all the things, what brings pleasure is good and what makes suffer – bad”. The criteria of estimation of the good and the bad is emotional inclinations of a person. Even Sophists proved the conventionality of legal norms, state laws and moral evaluations. Just as the person is a measure of all the things every society is a measure of justice and unfair. The legal relativism is phenomenologically displayed in the right of the person to decide whether to adhere to legal norms in every concrete case or not.

Legal nihilism is characterized by denying legal norms, non-recognition of their importance and significance, emphasizing their banality and formality by tendency to deny their effectiveness in regulation of relations between people. Legal nihilists consider that laws and

forbids can be passed over where it can be without punishment and what would be great if the majority of laws and rules were abolished at all [4].

At a modern society where laws change often and they can complicate the process of a social self-realization of the person legal relativism is the most common. A deep psychological basis of a legal relativism is ambiguity of mass legal psyche.

The ambiguity of a mass legal psyche is characterized by presence of parallel and equivalent settings on realization of mutually exclusive or contradictory models of behavior. In particular, the ambiguity of a mass legal psyche is determined as a psychological perception (absence of resistance) of current legislation and at the same time rejection of its legitimacy and implementation.

The main reasons of this phenomenon are:

- cultivation of controversial forms of the behavior in the society;
- inertial phenomena of Soviet legal awareness;
- low level of legal awareness of the personality.

Sometimes contradictory forms of behavior are cultivated in society. Particularly, it is considered that we should respect the rights of other people. But we often see how the actions of parents, teachers, churches contradict this principle. Tact, courtesy, good manners, modesty, self-sacrifice, as a rule, get verbal approval. However, in order to "achieve success" arrogance and aggression to others are permitted and approved. Although it is rarely acknowledged that professional athletes know that during the competition ethical norms are not as valuable as a result, that is to say victory in these competitions. Thus, we can speak of collisional values—those that are proclaimed, and really functioning in society.

The inexhaustible source of ambivalence in the public psyche is our common Soviet past. For example, a person is socially a demagogue and careerist, and officially is a serious speaker, a good leader. Thus, cognitive dissonance does not arise in the psyche of the individual. The process of thinking takes place simultaneously in different coordinate systems. Ideology gives the official value to deeds, social one is formed in the communication process. The reality contradicts to its ideological understanding. So there is the phenomenon of "dual thinking."

Thus, the ambiguity of mass legal psyche can be considered an adequate response to the real ambivalence values of post-communist society that has lost social grounds, rejecting the old system of ideology, economics, government and not finding new ones which are necessary for the proper functioning of the social organism. The phenomenon of "dual thinking" is common for our society. We believe that it is also evident in the functional process of psychological mechanisms of the legal regulation of individual behavior. Particularly, the individual adequate response to the existence of "double standards" in the assessment system of legal norms of the state will form the legal relativism as a result of the functioning of the legitimation psychological mechanism of regulation of the legal person's behavior.

According to dispositional personality theory, the readiness of the person to behavior in a certain social situation is related to the terms which preceded it. Mental instructions (attitudes) are stable over a long historical time and make a social legacy that every next generation takes over in the socialization process in the form of material or spiritual experience accumulated by past generations. A good example of fixing social experience in the most suitable form for transmission to posterity is proverbs and sayings.

So, we assume that a characteristic feature of the mass legal psyche of Ukrainians is a legal relativism and a deep psychological foundation of which is the ambiguity of mass legal psyche.

Further use of subjective methods of diagnostics of the legitimacy level of legal norms in the psyche of the individual can get accurate information about the features of legitimated psychological mechanism of regulation of the legal person's behavior.

We consider that as a result of the operation of legitimated psychological mechanism of the legal regulation of individual behavior arises as legal relativism characteristic of mass legal psyche.

To study the functioning of legitimated psychological mechanism of the legal regulation of individual behavior and to test the hypothesis, we have interviewed 500 people (240 men and 260 women aged from 18 to 45). All interviewed people live in Zhytomyr region. The interview was held in 2015-2016.

Results of the study show distribution of the subjective legitimacy levels of the whole sample:

The legal relativism - 75%;

Legal rigorism - 16%;

Legal nihilism - 9%.

We see that a characteristic feature of the mass legal psyche is a legal relativism (75%). This indicates that most Ukrainians who were interviewed in every regulatory situation reserve the right to decide whether to adhere legal norms or not in each case.

Legal rigorism is typical for 16% interviewed people. They are inclined to follow legal norms strictly and they are characterized by high social liability.

The smallest number of investigated people are at the level of legal nihilism (9%). Characteristic patterns of behavior for these people are the negation of legal rules to recognize the need and value, inclination to crime.

Analyzing gender differences in subjective legitimacy of the legal norms of the state, we see that there is no substantial difference: 80% of men and 70% of women are at the level of legal relativism. 14% of interviewed men and 18% of interviewed women have inherent rigorism. Legal nihilism is common for 6% of interviewed men and 12% of interviewed women.

Apparently, men have higher level of legal relativism. Perhaps, this is due to the fact that men as a category of population are more active in social and professional sphere and often have regulatory situations. They are oriented at achieving their life goals more than rigorous compliance with all legal norms. However, the difference in the responses between men and women is so small that we can talk about trends rather than on some significant differences.

Thus, on the basis of qualitative and quantitative analysis of the results of this research, we can make the following conclusions:

1. A characteristic feature of the mass legal Ukrainian psyche is legal relativism nowadays.

2. There are no significant gender differences in the level of subjective legitimization of legal norms.

Interpretation of the research results. Thus, as a result of the operation of psychological legitimated mechanism of the legal regulation of individual behavior, legal relativism has become a characteristic feature of mass legal psyche.

Why legal relativism is a feature of the legal mass psyche? Assessment of the legitimacy of legal norms implemented personality in the way of comparing it with its internal ideal model with notions of social justice. If existing rules for individual thought unable to give it to the free movement of self-realization (especially social), its attitude towards them will be critical, and the implementation of norms obligatory. Personality will be considered as a "danger zone", because at least she/he will seek opportunities to move into the zone of deviant behavior.

The probability that a personality will achieve her/his goals largely depends on the ability to take into account all the possible factors that can help or hinder this. The state took upon itself the function of making at least some factors are fairly certain, for this it creates a system of legal regulation of relations in society and oversees its implementation. That is why, it is

legitimate for the individual, at least from a rational orientation behavior is the legal system that ensures the stability of the law, strict implementation of all its citizens, to minimize the unpredictability of social life. This legal system increases the chances of personality that builds life plans and taking steps towards their implementation. Consequently, the legal relativism is an adequate response to individual instability and unpredictability of social life.

The legal relativism is one of the factors in the formation of ethnic self-consciousness of Ukrainian. Actually this factor causes some contempt to the laws, rules and formal regulations. The personality considers legality measure of their own idea of justice, lost respect for the law as a social institution, to the authorities, which are created to implement this law in society. Paradoxically, but is this capacity for reflection, concentration to construct "fair-unfair" forms "militancy" of Ukrainians, gives them the ability to defend their rights, to rebel against the existing government to change the course of history, to form their beliefs, to protect them in conjunction with other ethnic groups.

The fact that there no significant gender and age differences in the subjective legitimation of the legal norms of the state by the personality were not found, may also indicate that the legal form of relativism is deep enough and there is the level of the collective unconscious, therefore, is a powerful factor in shaping Ukrainian ethnic self-consciousness.

Conclusions. Having analyzed the results of our empirical research, we can formulate the following conclusions:

1. Legal relativism as a characteristic feature of mass legal psyche is a result of the operation of the legitimative psychological mechanism of the legal regulation of individual behavior.

2. The legal relativism is characterized by the relative standards/norms that are provided by completely conventional and variable nature. Phenomenological legal relativism is reflected in the fact that a person has the right to decide to adhere or not to adhere to legal regulations in each case. The basis of the legal origin of relativism is ambivalence of mass psyche. The legal relativism creates specific conditions for the formation of modern Ukrainian ethnic self-consciousness.

Prospects for further research is to continue in this direction, conduct new theoretical and empirical investigation, improvement of methodological tools in order to enrich the knowledge of the conditions and factors of ethnic self-consciousness.

1. Шмиглюк О. Г. Особливості уявлень учасників АТО про сучасного українця / О. Г. Шмиглюк // Наука і освіта. – 2016. – № 5. – С. 261-266.

2. Хотинець В. Ю. Этническое самосознание / В. Ю. Хотинець. – СПб. : Алетейя, 2000. – 240 с.

3. Лозко Г. Етнологія України: Філософськотеоретичний та етнорелігієзнавчий аспект: навчальний посібник / Г. Лозко. – К. : АртЕК, 2001. – 304 с.

4. Бромлей Ю. В. Этносоциальные процессы: теория, история, современность : монография / Ю.В. Бромлей. – М. : Наука, 1987. – 335 с.

5. Психологічні закономірності реалізації конструктивних функцій етнокультури в інформаційному суспільстві: монографія / М.-Л. А. Чепа, М. І. Савіна, С. Є. Солодчук [та ін.] ; за редакцією М.-Л. А. Чепи. – К., 2015. – 131 с.

6. Євтух В. Б. Етнічність: енциклопедичний довідник / В. Б. Євтух ; Нац. пед. ун-т імені М. П. Драгоманова, Центр етноглобалістики. – К. : Фенікс, 2012. – 396 с.

7. Мухина В. С. Личность в условиях этнического возмездия и столкновения цивилизаций: XXI век личности / В. С. Мухина // Развитие личности. – 2002. – № 1. – С. 26.

8. Дробижева Л. М. Российская и этническая идентичность: противостояние или совместимость // Россия реформирующаяся / Под редакцией Л. М. Дробижевой. – М. : Academia, 2002. – С. 213-244.
9. Афонасенко Е. В. Особенности этнического самосознания современной учащейся молодежи Китая и России: дис...кандидата психологических наук: 19.00.01 / Афонасенко Елена Викторовна. – М., 2004. – 110 с.
10. Ставицький Г. А. Психологічні та соціальні чинники розвитку етнічної самосвідомості в юнацькому віці: автореф. дис. на здобуття наук. ступеня канд. псих. наук : спец. 19.00.07 "педагогічна та вікова психологія" / Ставицький Геннадій Анатолійович. – К., 2016. – 21 с.
11. Гавриловська К. П. Діагностика рівня суб'єктивної легітимності правових норм / К.П. Гавриловська, Н. В. Хазратова // Практична психологія та соціальна робота. – 2012. – № 10. – С. 31-36.